90-1648

Supreme Court, U.S.
FILED
MAR 1 1991
OFFICE OF THE CLERK

No. _____

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1990

D. Georgiou,
Petitioner

v.

George A. Gauthier,
Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE APPELLATE COURT OF ILLINOIS, FIRST JUDICIAL DISTRICT

Dimitrios C. Georgiou, M.D.
2642 Prairie Avenue
Evanston, IL 60201
(708) 869-8189

Pro se Petitioner

QUESTIONS PRESENTED FOR REVIEW:

1. Do penumbra doctrine and Supreme Court precedent (1) privileges against compelled acceptance of unwanted ineffective attorney, protect the fundamental right to the Aid of Legal Counsel, and set aside an instrument signed under confusion during court procedure by person whose attorney had turned a proverbial deaf ear to dismissal during same court procedure?

2. Do IV and XIV Amendment privileges against unreasonable searches and seizures and against deprivation of property, protect person's counterclaims (2) and original contents of

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(1): Evitt v. Lucey, 469 U.S. 387 /(1985)

(2): Fed. R. Civil P. Rule 13

person's apartment subjected to successive breaking and entering (and removal of materials including but not limited to original reference records of proper but never taken up complaint of discrimination against a governmental agency), encouraged, in part, by demonstrated refusal of police to apply due diligence, and designedly concealed by a suit for possession of the apartment?

3. Do pursuit of happiness privileges protect against annihilation of the peaceful enjoyment of the premises and against imposition of burden and restrictions concerning the ability to follow one's profession, through successive and continuing breaking and entering associated with relentless removal of pertinent records, documents, mail, and other actions?

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OPINION BELOW

The Appellate Court of Illinois, First District, which decided the case on the merits, issued its decision in the form of a Rule 23 Order, appended at 1A.

JURISDICTION

The jurisdiction of the Supreme Court of the United States is invoked under 28 USC 1257.

PETITION FOR WRIT OF CERTIORARI
TO THE APPELLATE COURT OF ILLINOIS,
FIRST JUDICIAL DISTRICT

1. The Supreme Court of the United States on the 18th day of December 1990 entered the following order:

No. A-473 D. Georgiou, Petitioner, v. George A. Gauthier. ORDER. UPON CONSIDERATION of the application of counsel for the petitioner, IT IS ORDERED that the time for filing a petition for a writ of certiorari in the above-entitled case, be and the same is hereby, extended to and including March 1, 1991. /s/ John Paul Stevens Associate Justice of the Supreme Court of the United States. Dated this 18th day of December 1990.

2. The petitioner Dr. D. GEORGIOU (DIMITRIOS C. GEORGIOU, M.D., PSYCHIATRY

AND NEUROLOGY) had respectfully petitioned the Supreme Court of Illinois for leave to appeal from the decision (Rule 23 Order) of the Appellate Court of Illinois, First District, so that the said Rule 23 Order of the Appellate Court might be reviewed and reversed or modified. The Supreme Court of Illinois (case No. 70670) on October 3, 1990, denied the petition for leave to appeal.

The Appellate Court of Illinois filed its decision (Rule 23 Order), (appended herewith), on May 30, 1990. A petition for Rehearing was filed timely on June 20, 1990, which was denied on July 12, 1990. A Rule 368 Affidavit in order to stay the mandate was filed timely on July 17, 1990. The petition for leave to appeal in the Supreme Court of Illinois was timely filed following the

denial of the petition for rehearing on July 12, 1990. The mandate was stayed on July 17, 1990.

3. The points relied upon for reversal were the following:

A) On its own motion the Appellate Court of Illinois appeared re-opening on May 29, 1990, the case (which was already decided either on May 24, 1990, (day of Notice of the Appellate Court to the parties that the Appellate Court's "decision on the case will be filed on May 30, 1990"), or on May 27, 1990, (typed on the Appellate Court's "decision" (Rule 23 Order), filed on May 30, 1990, (see appendix)), by granting on May 29, 1990, Defendant's Motion for Leave to file response to the objections of plaintiff to defendant's motion for leave to file reply brief in excess of page limitation instanter.

The granting of defendant's response probably indicated a "last moment" finding of fact by the Appellate Court, justifying the defendant. Inconsistent with its probable finding of fact the Appellate Court of Illinois did not alter its already prepared "decision" and the confusion still existing among practitioners with regard to admissibility of "last moment" findings documents the need for further clarification by the Appellate Court. In addition, the fact that the Rule 23 Order was "filed" (and not "entered") emphasizes more the need for further clarification by the Appellate Court.

B) Inconsistent with the fact that the Defendant's Motion for Stay of Possession, filed on November 1?, 1989, and granted on November 28, 1989, was

based, in part, on Defendant's Memorandum of November 4, 1989, (see Appendix), which had been appended to said Motion for Stay of Possession several months prior to the April 4, 1990, denial of the defendant's additional Motion to File Appendix to Opening Brief Separately (containing the said Memorandum), mentioned in the Rule 23 Order of the Appellate Court (page 6, first paragraph), the Appellate Court stated that "the Memorandum ... is not now before us" (page 6 of Rule 23 Order). The question if the granting of Motions, based on appended pleadings, documents the admissibility of the said pleadings, pertains to the uncertainty still in effect with regard to the admissibility of certain pleadings and to the demand for further instruction by the Appellate Court.

C) The Appellate Court denied Defendant's Motion to file Reply Brief in Excess of Page Limitation Instanter, having indicated on its pertinent Order the fact that "an objection having been filed by (plaintiff-) appellee", despite the fact that plaintiff-appellee had used verbatim a long section of defendant's Reply Brief in order to compose his "objections", having therefore introduced the defendant's Reply Brief into the adversarial procedure. The above fact illustrates the conflict still involved with regard to the admissibility of certain pleadings with pertinence to the granting or denying motions and to sustaining objections, and to the need for further clarification by the Court.

D) The fact that the Circuit Court

had been fully advised in the premises with regard to a lengthy testimony by defendant, during a Court inquiry or investigation process, at the initiative of the Court. It was given to a Circuit Court Judge (whose name and professional identity were unknown to defendant who was simply answering the detailed questioning with regard to defendant's contention pertaining to the successive and relentless breaking and entering into defendant's apartment targeting principally against items invaluable for the defendant's professional development, financial reputation, credit reputation and against records of various sorts from defendant's career as the Chief Medical Officer and Consultant in Psychiatry and Neurology with the Department of Defense Armed Forces Examining and Entrance Station

(whose name has been changed currently to MEPS), and complaints the defendant had filed following his resignation from the above mentioned position (about which please see below). The above mentioned questioning occured in the geographical area of the Court room of the trial. The said Honorable Judge was later shown to be the principal presiding Judge of the case. The above facts prove that the Circuit Court had already taken cognizance at the Court's own initiative of defendant's second contention (see Rule 23 Order of the Appellate Court of Illinois, appended), regarding breaking and entering and associated violations and permanently either destroying or removing selectively the documentations of defendant's achievements, professional documents, records of all kinds, items mentioned

above, valuable property of many kinds and, once, the defendant's car from its leased --for years-- parking spot at the lot of the house (or home) where the apartment is, "by first pushing it into the alley" (according to a neighbor's statement), and the car was never seen again. The pertinent questions had been raised at the Circuit Court level. Nevertheless, in conflict with the facts, the Appellate Court (on page 10, first paragraph, of its Rule 23 Order) states that "questions ... may not be raised for the first time upon appeal..." discussing on questions which in fact had been raised in the Circuit Court level, not on an ex parte basis but at the Courts initiative within the operative term "the Court being fully advised on the premises". The conflict and confusion become more

pronounced knowing that "the Supreme Court (of the State of Illinois) has held that paragraph (e) (7) of the Supreme Court Rule 341 (e), like the rest of the Rule, states an admonition to the parties rather than a jurisdictional limitation on the Court, noting the power of the Reviewing Court under Rule 366. Hux v. Raben, 38 Ill 2d 223, 230 N.E.2d 831 (1967)" (Smith-Hurd Ill. Annotated Statutes Ch. 110A, Practice Rules, S. Ct. Rule 341, Historical and Practice Notes). Because of the above mentioned conflict and confusion, more light is needed from the Court.

E) The fact that removed documents from defendant's apartment include but they are not limited to voluminous materials pertaining to a still pending complaint of defendant versus a govern-

mental agency (Department of the Army) (see Appendix), including (without being limited to) documents of a previous procedure in the U.S. District Court, Northern District of Illinois, and the fact that the removal of documents and the destruction of documents affect defendant unfavorably with regard to his pending complaints mentioned above, further clarification is needed by the Court with regard to further appropriate procedures and proper and sufficient redress.

(Note: At a certain point during defendant's tenure as Chief Medical Officer and Consultant in Psychiatry (1977-1980) with the Department of the Army (or the Department of Defense) Armed Forces Examining and Entrance Station (currently named MEPS), defen-

dant started receiving pressures in order to accept Commission and to become a Commissioned Officer. The Chief Medical Officer's position was a civilian position (General Services Administration). Then the above mentioned pressures were replaced by discriminatory actions. Defendant complained, then resigned in protest, submitting additional complaints of discrimination. Defendant, recently, during the preparation of this Petition for a Writ of Certiorari, contacted by phone the Solicitor General's Office in Washington, D.C., and discussed with the Deputy Solicitor General. Defendant thinks that the U.S. Solicitor General must support the said petitioner's position through the filing of an Amicus Curiae Brief and/or otherwise. The Deputy U.S. Solicitor General stated that their

office defends the Government "unless the Government is wrong". Defendant stated that "this is such a case". The Deputy Solicitor General (Mr. John G. Roberts, Jr.) stated in addition that their office occasionally defends cases not involving the Government as a party.)

F) Inaccurately the Appellate Court indicates on page 7 of its Order (copying from plaintiff's brief), the also inaccurately and repeatedly stated in plaintiff's brief "operative language that it is fully advised in the premises" (emphasis added). The fact is that (as Defendant has stated in his Reply Brief) no Order of the Circuit Court contains the above "language". Confusion originating from incorrect statements in Court decisions, taken from briefs of parties, makes necessary further clari-

fication by the Court.

4. Statement of facts: The factual bases leading to an understanding of the case, pertain to Petitioner's two contentions discussed in the Rule 23 Order of the Appellate Court of Illinois, as well technical and other issues. As Petitioner has mentioned above, his second contention was in fact raised in the circuit court. The particulars are as follows: Petitioner during a period of time his apartment continued getting periodically burglarized, was summoned for trial, by having been served by one piece of paper (see, Record on Appeal, document C9) and was required to appear on October 23, 1989, in Court Room L of the Circuit Court, 2nd Municipal District. On October 20, 1989, Friday, in the early afternoon,

Defendant visited the above mentioned Courthouse with the purpose to find out if additional papers had been filed with the Court, in order to take cognizance of them. Petitioner (Defendant) having found the door of the Court Room L closed, found himself wondering what he should do, then Petitioner was approached by the person mentioned above (page 7), who asked Petitioner (Defendant) a very large number of pertinent questions, after Petitioner indicated the purpose of his visit; the above person did not identify himself, until the end of the conversation when he indicated "I am a Judge". On Monday, October 23, 1989, on the trial date, Defendant was surprised to see, in the bench of the Court Room L, the same Honorable Judge whose questions Defendant had answered as mentioned above.

His name on the bench read, Judge Topol. Later, when Defendant (Petitioner) received the record on Appeal, realized that that the Honorable Judge Topol had been involved with the case continuously since 9-25-89 (see, Record on Appeal, C2). The only day Judge Topol was not involved with the case, was the "trial day" since he had to be absent.

5. Argument: The issue of burglaries and related issues were raised by Petitioner at the Circuit Court level, as issues of fact. The plaintiff and agents have committed hostile actions and offenses against the right of possession of property by Petitioner, through failure to protect Petitioner's apartment and through destruction and removal of Petitioner's property in and from the Petitioner's apartment

and otherwise, and the same continued for a long time. When Defendant reported the offenses once more to the Evanston Police Department, Defendant (Petitioner) was told, once more, the following: "Talk to your landlord".

The landlord has admitted that he "had left the door of the apartment unlocked, after leaving...", with pertinence to the burglaries prior to May 1985. (Note: Landlord had entered without permission). Relevantly the 13 Am Jur 2d, cumulative supplement Apr. 1990, at 112, states: Sect. 37. Ownership of structure entered: At p. 342, following note 17: "A landlord can be guilty of burglarizing the premises of his tenant by breaking and entering without permission of the tenant" (17.5). Bradley v. State, 244 Ind. 630, 195 NE2d 347,

holding that burglary is an offense against possession of property, not ownership. Also see 13 Am Jur 2d, p. 328 sect. 13 Constructive breaking, under note 4.

The fact that Petitioner's apartment was and keeps getting burglarized does have immediate factual and legal relation and is properly before this Court on review.

It is a fact that, when Petitioner returned in May 1985 from his trip to his mother's home in Athens, Greece, (where Petitioner had been in successive trips in order to take care of his mother since she had suffered a fracture on a background of osteoporosis and had undergone surgery twice in order to treat a complication of bone infection

resisting treatment with antibiotics), found his apartment door unlocked, his apartment burglarized, almost everything in the apartment turned upside down, broken, missing or destroyed. Petitioner's records, of all sorts, were mostly missing or destroyed. Petitioner's original research documentation and other original papers, almost ready for publication, were missing. (Note: One original long paper authored and treasured by Petitioner because of its originality, being the foundation for a planned new book on the subject of "Psychiatry and Physics, or the New Psychiatry" , in preparation during the last fifteen years, since 1971, was missing in its entirety. Prior announcements of the work under preparation, have coined the term " The New Psychiatry".).

The Petitioner's records were including, but they were not limited to, professional career records, professional and licensure or other Medical Boards Certificates, original letters from very important persons pertaining to Petitioner's professional career, reflecting very favorably upon Petitioner and being extremely important for his professional future, Internal Revenue Service records (tax returns), diaries, personal notebooks, mail items e.g. documents based on previous credit rating and credit reputation of invaluable financial importance for Defendant (e.g. numbered documents pertaining to "premium gold" credit cards of very high lines of credit "already issued", requiring only a signature or minimal current information, to which (documents) Petitioner was unable to refer after

the documents had been removed from the apartment because the original number on them was a required reference, records of administrative and legal procedures of extreme importance (as the complaints of discrimination against the Department of the Army are and as the appended Appreciation Letter from the Department of the Army, issued prior to the discrimination era, is.). Additional missing items were personal photographs of Petitioner, items of every day use, e.g. clothing, shoes, books, credit cards, and credit records dating back to 1970 and other items. The burglaries continued occuring, despite protective attempts and in addition were extending to replaced certificates and papers. The landlord's comments, when reachable, were sarcastic, and the damages to Petitioner's professional career tremendous.

The Evanston Police Department, upon Defendant's (Petitioner's) complaints, indicated repeatedly: "Talk to your landlord" and the apparent attention of the Police to this matter appeared to be minimal. Interestingly, similar was the"attention" by the Fire Department, in two instances, when Petitioner called them to open door "because of forgotten key", despite the evidence of invasion.

Because of the limited action or the lack of action to correct the situation by the Evanston Police Department, Petitioner has tried his best in order to preserve the evidence of the burglaries and of the destructions. A possession by the landlord would have eliminated the evidence. Petitioner has waived nothing. Additional details are

mentioned in the Rule 23 Order of the Appellate Court, appended.

The plaintiff has demonstrated actual malice or malice in fact and express malice, as clearly reported in 52 Am Jur 2d, MALICE, sect. 1,2. In addition the plaintiff has committed malicious mischief. Actual malice is indeed involved as an essential element and punitive damages should be allowed. (22 Am Jur 2d, DAMAGES sect. 249, 250). Criminal mischief was also committed since its essence, i.e. the reckless, knowing or intentional damaging of another's property without a right to do so, was present (see, 54 C.J.S. p. 508). Specific Malice and Intent to damage and injure the professional status, career, financial reputation, credit reputation of Petitioner were

also present. The Sect. 650 Declarations pertaining to State of mind (29 Am Jur 2d EVIDENCE, Sect. 650, p. 700 et seq.) are also applicable.

The November 4, 1989, Memorandum, once more, is admissible in the Appendix, as mentioned above, because of the additional reason that the Supreme Court of Illinois Rule 342, Smith-Hurd Illinois Annotated Statutes, chapter 110A, Practice Rules, 1989 Cumul. Ann. Pocket Part, page 53, Historical Note indicates: "The 1988 amendment in the subdivision relating to the contents of the Appendix, inserted "any pleadings which are the basis of the Appeal or pertinent to it".

An additional evidence showing that portions of the Rule 23 Order of

the Appellate Court have been copied directly from the plaintiff's brief, is the fact that the Rule 23 Order refers to the No. of the Circuit Court case where the Appeal was taken from as No. 88 M2 1681 (instead of the correct 89 M2 1681), a mistake made originally by the plaintiff on his plaintiff's brief.

6. The conclusion the Petitioner (Defendant) had presented in previous briefs is the following and is always applicable and it is being reconfirmed: Considering all of the foregoing, the facts and issues one can only wonder what a reasonable independent observer would make of such a situation where a tenant is allowed to be victimized through breaking and entering and consequent actions of removal activities,

searches, seizures and of destruction of Petitioner's (Defendant's) property and of other entities, and through additional actions, in the most reckless, heedless and wrongful manner over and over again. Petitioner (Defendant) respectfully requests that the Court regard these larger economic implications and assess punitive damages in the amount of twenty million dollars. In addition Petitioner (Defendant) seeks actual damages (days lost from professional occupation, destroyed property, removed property) of two million dollars, general damages (mental suffering, injury to reputation) of thirty million dollars. Total damages: fifty-two million dollars. By awarding Defendant (Petitioner) the full amount the Court will reaffirm the Constitutional rights of Petitioner (Defendant)

and the right of the individual to privileges protecting equally under the law.

7. Since it is perhaps necessary to mention the month and the year for at least a number of the breaking and entering offenses which were committed: Mar. 85, Apr. 85, May 85, Aug. 85, Oct. 85, Dec. 85, Jan. 86, Mar. 86, May 86, Jul. 86, Oct. 86, Dec. 86, Feb. 87, May 87, Jul. 87, Sep. 87, Nov. 87, Dec. 87,Jan. 88, Feb. 88, Mar. 88, May 88, Jun. 88, Aug. 88, Oct. 88, Nov. 88, Dec. 88, Jan. 89, Feb. 89, Mar. 89, Apr. 89, May 89, Jun. 89, Jul. 89, Aug. 89, Sep. 89, Oct. 89, Nov.89, Dec. 89, Jan. 90, Feb. 90, Mar. 90, Apr. 90, May 90, Jun. 90, Jul. 90, Aug. 90, Sep. 90, Oct. 90, Nov. 90, Dec.90, Jan.91, Feb. 91, were the dates of some of such offenses.

8. Petitioner would like to make the additional comment that with regard to Question Presented For Review No. 1, in Petitioner's opinion, the Plaintiff, because of reasons mentioned above, has invoked equitable estoppel, therefore the instrument (the "agreed order") is to be set aside for this reason, in addition to the Constitutional Law reasons. As the Rule 23 Order of the Appellate Court of Illinois indicates, the Petitioner asserted his rights "for three hours", since the proposed "agreed order" was not equitable. In addition, the attorney failed in his counseling that the rights of Defendant (Petitioner), as discussed in this Brief and Petition for a Writ of Certiorari, "were protected by the agreed order" (see, Rule 23 Order of the Appellate Court, Pages 2 and 3).

The Congressional Quarterly's Guide to the U.S. Supreme Court, Second Edition, 1990, page 559: The Aid of Legal Counsel, at page 564: A Rule of Reason, indicates: "In Evits v. Lucey, the Court held that an attorney's failure to file a statement of appeal by the legal deadline constituted evidence that he was not providing his client the effective aid of counsel. Evitts v. Lucey, 469 U.S. 387 (1985)." In the instant case too the attorney's failure "constituted evidence that he was not providing his client the effective aid of counsel".

WHEREFORE, the Petitioner prays that Certiorari is granted.

Respectfully,

D C Georgiou

Dimitrios C. Georgiou, M.D.

Petitioner
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APPENDIX TO

PETITION FOR WRIT OF CERTIORARI

TO THE APPELLATE COURT OF ILLINOIS,

FIRST JUDICIAL DISTRICT

APPENDIX TO PETITION FOR WRIT OF CERTIORARI

Dimitrios C. Georgiou, M.D.

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Pro se Petitioner

A P P E N D I X

THIRD DIVISION May 27, 1990

(Seal:) NOTICE The text of this order may be changed or corrected prior to the time for filing of a Petition for Rehearing or the disposition of the same.

No. 1-89-3013

IN THE APPELLATE COURT OF ILLINOIS

FIRST JUDICIAL DISTRICT

GEORGE A. GAUTHIER	Appeal from the Circuit Court of
Plaintiff-Appellee,	Cook County.
v.	No. 88 M2 1681
DR. D. GEORGIOU,	Honorable Joseph H. Romano,
Defendant-Appellant.	Judge Presiding.

O R D E R

Plaintiff, George Gauthier, initiated this forcible entry and detainer action in the circuit court against defendant, Dr. Dimitrios C. Georgiou, for the possession of residential premises. The parties subsequently entered

an agreed order which the defendant moved to vacate. Following a hearing, the trial court denied the motion. Defendant now appeals, contending that: 1) the denial of the motion was improper because the trial court failed to "read" or appropriately consider the motion and a related memorandum; and 2) plaintiff failed to protect the leased premises from wrongful entry during defendant's absence.

On September 5, 1989, plaintiff, as landlord of premises located at 2642 Prairie Avenue in Evanston, Illinois, filed a forcible entry and detainer action against drfendant, a tenant who resided in Apartment 2-F. The action sought only possession of the premises.

On the scheduled trial date of October 23, 1989, defendant appeared without counsel and was allowed a continuance

until October 30, 1989, to obtain counsel. The order stated that the October 30, 1989, hearing would be "final."

On the morning of October 30, 1989, just prior to the trial, defendant met with his attorney for the first time. This attorney was the second attorney hired by defendant. It was defendant's impression that his second attorney demonstrated a "strong bias" against psychiatrists and psychiatry, defendant's chosen profession. For the next three hours, defendant, his attorney, and plaintiff's attorney wrangled over the terms and defendant's understanding of a proposed agreed order. Defendant claims to have been in a "state of confusion with regard to the particulars of the agreed order". Defendant asked his attorney how defendant could dismiss him and enlist the services of a third

attorney. According to defendant, the attorney did not reply. Defendant further claims that at that time he was under the impression that he was obligated to be represented and proceed to trial that same day. He also says that he did not know that a Chicago Bar Association attorney was assigned to the particular court where the parties were to appear.

Apparently, at some point during the lengthy discussion, defendant had a brief conversation with the trial judge regarding defendant's concern that "all of his rights were preserved". The trial judge advised defendant to continue discussing the matter with his attorney which defendant did. During the subsequent discussion, defendant's attorney told him that his rights were protected by the agreed order. According

to the defendant, he then agreed to initial the order with the caveat that he could not "read" the order and therefore could not give "informed consent", but that he would rely upon his attorney's advice.

The agreed order provided that: 1) an order of possession was entered, but stayed until November 30, 1989; 2) defendant would provide access to the apartment on November 1, 1989, for plaintiff to decorate and renovate from 9 a.m. to 5 p.m.; 3) if access was not provided, plaintiff might move to vacate the stay of possession and seek immediate possession; and 4) defendant would pay use and occupancy at a rate of $345 per month from September 1, 1989, until possession was finally relinquished.

During the afternoon of October 30, 1989, defendant claims to have contacted

additional attorneys who advised him that he had been improperly counseled by his second attorney. Defendant immediately dismissed his second counsel by certified letter dated October 30, 1989, claiming that the attorney had improperly explained the specifics of the agreed order, so that defendant remained confused.

On the next day, October 31, 1989, defendant and plaintiff both signed a "memorandum" which referred to the agreed order of October 30, 1989, and which provided additional specifics regarding the provision of access to the apartment, including that the date of access would be changed from November 1 to November 4, 1989.

On November 3, 1989, defendant filed a notice of motion and a motion to vacate the agreed order entered on Octo-

ber 30, 1989. The notice of motion made reference only to the filing of the motion to vacate the agreed order. The motion was lengthy and recited that defendant had been confused about the terms of the agreed order as he was improperly counseled by his attorney. The motion essentially presented the same arguments defendant raises on this appeal concerning the circumstances surrounding the execution of the agreed order.

On November 6, 1989, plaintiff filed a "Motion for Immediate Hearing of Motion and Immediate Possession." This motion also requested that defendant be ordered to pay use and occupancy as due in accordance with the agreed order.

On November 8, 1989, the trial court heard both defendant's motion to vacate the agreed order and plaintiff's motion for immediate possession. Although

Although defendant has not provided a transcript of proceedings or any bystander's report of this hearing, defendant maintains that the trial court "read" plaintiff's motion and additional materials in their "entirety," but did not consider or "read" defendant's motion or a related "memorandum" dated November 4, 1989. Defendant claims that the only material read by the trial court was defendant's letter dismissing his second attorney because that letter was located "on the top" of all the documents.

At the conclusion of the hearing, the trial court granted plaintiff immediate possession as of that date, November 8, 1989; and the court denied defendant's motion to vacate the agreed order. The trial court did not rule on plaintiff's request for use and occupancy payments. Subsequent to the filing

of the notice of appeal, the order of possession was stayed pending an outcome.

As a threshold matter, we decline to dismiss this appeal as requested by plaintiff on the basis that defendant has violated Supreme Court Rules in the filing of his appellate brief. (107 Ill. 2d R. 341 et. seq.) Plaintiff raised this issue by motion before this court on March 13, 1990, and we denied it on March 28, 1990. We fail to find that this pro se defendant has since violated Supreme Court Rules so flagrantly as to require dismissal. See Menicocci v. Archer Nat'l Bank of Chicago, (1978), 67 Ill. App. 3d 388, 390, 385 N.E.2d 63; In re J.M. v. William McCarron (1988), 170 Ill. App. 3d 552, 556, 524 N.E.2d 1241.

Similarly, we also decline to dismiss the appeal on the basis that it is now

moot. That defendant concedes that his leasehold rights terminated as of April 1990, as asserted by plaintiff, is nowhere reflected by the record before us. Furthermore, even if the record reflected such a concession, it still does not provide us with sufficient information to discern the legal basis for any such concession. Accordingly, we now consider defendant's first contention.

Defendant argues that the denial of his motion to vacate the agreed order of October 10, 1989, was improper because the trial court did not consider or "read" that motion and a related "memorandum" dated November 4, 1989. The record, however, fails to reflect the inclusion of this memorandum. A reviewing court will not consider anything which is not contained in the

record. (International Amphitheater v. Vanguard Underwriters Insurance Company (1988), 177 Ill. App. 3d 555, 564, 532 N.E. 2d 493.) Indeed, defendant attempted to have this memorandum included in the record by way of an appendix to his appellate brief. However, we denied defendant leave to file such an appendix on April 4, 1990, so that the memorandum is not now before us.

Since defendant has not supplied a transcript or a bystander's report of the November 8, 1989, hearing in accordance with Supreme Court Rule 323 (c) (107 Ill. 2d R. 323(c)), we have no choice but to indulge in every reasonable presumption favorable to the judgment order or ruling from which an appeal is taken. See Altaf v. Hanover Square Condominium Assoc., No. 1, (1989), 188 Ill. App. 3d 533, 539, 544 N.E. 2d

1032; and Dell' Armi Builders, Inc. v. Johnston (1988), 172 Ill . App. 3d 144, 149, 526 N.E. 2d 409.

Even assuming that the trial court "read plaintiff's brief in its entirety" either silently or out loud, or that defendant could discern what in fact the trial court was reading at any given point, this does not demonstrate that the trial court did not consider or read defendant's motion filed some five days previously. Indeed the trial court's order reflects a consideration of defendant's motion because it specifically stated that it concerned a hearing on that motion, that the court was "advised in the premises," specifically recognizing that defendant was appearing "personally", and yet it denied the motion. Particularly where no report of proceedings is supplied and the judgment

order utilizes the operative language that it is "fully advised in the premises," a reviewing court will indulge in every reasonable presumption favorable to the order and must presume that the matters heard by the trial court were sufficient to support the judgment absent any contrary indication in the record. Altaf v. Hanover Square Condominium Assoc., No. 1, 188 Ill. App. 3d at 539; Dell' Armi Builders, Inc. v. Johnston, 172 Ill. App. 3d at 149; In re Marriage of Macaluso (1982), 110 Ill. App. 3d 838, 846, 443 N.E.2d 1.

Accordingly, we believe any argument that the trial court did not consider or "read" defendant's motion to vacate the agreed order is totally insupportable. See Foutch v. O'Bryant (1984), 99 Ill. 2d 389, 459 N.E.2d 958.

However, even though not explicitly

stated, defendant seems to argue that denial was improper because there were legal and factual bases to support vacatur of the agreed order.

> "Such an order can be set aside only by agreement of the parties upon a showing that it resulted from fraudulent misrepresentation, coercion, incompetence of one of the parties, gross disparity in the parties' bargaining positions, or newly discovered evidence." (Emphasis added.) (Kandalepas v. Economou (1989), 191 Ill. App. 3d 51, 54, 547 N.E.2d 496; Berymon v. Henderson (1985), 135 Ill. App. 3d 858, 865, 482 N.E. 2d 391.)

None of these bases exist in this case.

Certainly defendant was not incompetent at the time he initialed the agreed order, nor was he "coerced" into

entering the agreement. Being advised that one must sign or proceed to trial that same day, going with the legal representation at hand, is not coercion. (See First Sec. Bank of Glendale Heights v. Bawoll (1983), 120 Ill. App. 3d 787, 458 N.E.2d 193.) Neither can defendant claim that a gross disparity in the parties' bargaining positions existed given defendant's professional status, articulateness, and the tenacity which he has demonstrated throughout this matter. Furthermore, the strongest argument defendant makes that the terms of the agreement were fraudulently misrepresented is that he later learned that a reference to a third party with whom he might have to negotiate was not incorporated into the final agreed order, although the attorneys included such a reference when repetitiously "reading"

the proposed order to him. Indeed the best that can be said is that defendant did not understand the agreement, his counsel's explanations did not clarify it to him, and, nevertheless, he signed in reliance upon counsel. Such a scenario, unfortunately, does not rise to the level of fraud, coercion or unfair advantage. A party to a written contract is under a duty to learn or know the contents of that contract before he signs it and is under a duty to determine the obligations which he undertakes by the creation of a written agreement. (Leon v. Max E. Miller & Son, Inc. (1974), 23 Ill. App. 3d 694, 699-70, 320 N.E.2d 256). Mature adults have a duty to be fully advised as to the nature of the contents of a binding agreement. See Great American Federal Savings and Loan Association v. Grivas (1985), 137 Ill.

App. 3d 267, 484 N.E.2d 429.

Defendant does contend that during the afternoon of the day he initialed the agreement he "realized" after contacting "other attorneys" that he had been "improperly counseled" by his second attorney. What information was provided to defendant by these attorneys that caused him to "realize" anything is not even suggested. Hence, we do not find that newly discovered evidence has been presented warranting vacatur of the agreed order.

Of significance also is that defendant entered into and signed a supplementary agreement (memorandum dated October 31, 1989,), which further particularized the terms of the agreed order the day after he signed the agreed order and allegedly "realized" that he had been "improperly counseled". Surely, defend-

dant cannot honestly claim that he was coerced, or unfairly disadvantaged when he signed the agreed order since he subsequently freely entered into the supplementary agreement. Accordingly, we find no error by the denial of defendant's motion to vacate the agreed order.

Defendant's second contention is that since 1985, plaintiff has failed to protect the leased premises during defendant's absences. He contends that in 1985, plaintiff left the apartment door unlocked, so that the apartment was burglarized. Since that time, defendant has noticed that valuable personal items are being removed and foreign objects, including "insects" are appearing in the apartment.

This issue,however, is not properly before us at this time. The point was nowhere raised below at the trial court,

so that we cannot take cognizance of it now. It is axiomatic that questions not raised in the trial court are deemed waived and may not be raised for the first time upon appeal. Western Casualty & Surety Company v. Brochu (1985), 105 Ill. 2d 486, 500-1, 475 N.E.2d 872.

Finally plaintiff requests that we grant him costs, attorney fees, and any use and occupancy payments allegedly due him. The trial court,however, never ruled on plaintiff's request for use and occupancy payments, although plaintiff requested that relief in his motion for immediate possession. Accordingly, we would remand to the trial court for a consideration of any amounts owed because of use and occupancy in accordance with the agreed order.

The judgment of the circuit court denying defendant's motion to

vacate the agreed order is affirmed. We remand the cause to the trial court for a consideration of any use and occupancy payments in accordance with the terms of the agreed order.

Affirmed and remanded.

WHITE, J., with CERDA, P.J. and FREEMAN, J., concurring.

IN THE APPELLATE COURT, STATE OF ILL.

FIRST DISTRICT

GEORGE A. GAUTHIER, Plaintiff- Appellee,

v. Dr. D. GEORGICU, Defendant- Appellant

NO. 1-89-3013

ORDER

THIS CAUSE COMING ON TO BE HEARD upon the Motion of Defendant-Appellant For Leave To File A Response To The Objections Of Plaintiff-Appellee To Defendant-Appellant's Motion To File Reply Brief In Excess Of Page Limitation Instanter, due Notice having been given and the Court being advised in the premises, IT IS HEREBY ORDERED that the Motion To File A Response is granted.

(Seal:) ORDER ENTERED May 29 90

(signature:) David Cerda Justice

Dr.D.GEORGICU,Appellant,2642 Prairie Ave.
Evanston, IL 60201, Tel:708/869-8189

GILBERT S. MARCHMAN,CLERK APP.CT.FIRST DIS.

IN THE CIRCUIT COURT OF COOK COUNTY, ILL.

George A. Gauthier

v. NO. 89 M2-1681

Dr. D. Georgiou

Agreed ORDER

(Petitioner's Note: Text handwritten by plaintiff's attorney, not legible)

This matter coming on for hearing in date set, plaintiff appear(ing?) (...?) with his attorney; Defendant appearing and with his attorn(ey) (...?) parties having agreed in a settlement and the Court being adv(...?) (..?) the premises; it is hereby ordered. 1. An order of possession for Apt 2F 2642 Prairie, Evanston (..?) (..)ntered and stayed to November 30, 1989. 2. Defendant shall give Plaintiff access to the apartment for (decor)-ation and renovation. Plaintiff shall work around Defend(ant's) (posse?)ssions to the extent possible and practicable. If not, Plaintiff (...)ll move possessions (Petitioner's Note: Different

handwriting here, not legible) to a safe place (Petitioner's Note:Different handwriting here, legible in part, reading approximately:)/only in the presence of and following approval by defendant (initials)/,and return them after (decor)ation and renovation is finished. Access shall be provided on 11/1/89 at 9 am.Defendant shall give plaintiff access to the(ap)artment,work shall take place from 9 a m to 5 pm. 3. If Defendant does not cooperate in the access, Plaintiff (...?) have right to move for vacating stay of possession (...?) obtain immediate possession. 4. Defendant shall pay use and occupancy at rate of $345 per month from 9/1/89 to date possession is delivered or obtained.

(Plaintiff's signature, Defendant's ini-

(Seal:) ENTERED 10/30/1989 /tials.)

AURELIA PUCINSKI, CLERK OF THE CIRCUIT

(continued)

COURT. (Notes, not legible)

Atty No. 50373 Name Charles R. Goerth

Attorney for plaintiff,Address 1200

Central ,City Wilmette IL 60091

Telephone 256-7102

(Record on Appeal number, seal:)

C000012

AURELIA PUCINSKI, CLERK OF THE CIRCUIT

COURT OF COOK COUNTY, ILLINOIS

MEMORANDUM

To: Mr. George A. Gauthier

From: Dr. D GEORGIOU (initialed)

Subj: Your demand to have access to my apartment

Date: November 4, 89 (Saturday)

I do not understand why you came this morning to my apartment, despite the fact that I have personally served you on November 3, 89 (yesterday) a copy of my Motion to vacate "agreed order".

You have been knocking thunderously and you were shouting and demanding for me to give you access, mentioning that you were in possession of an "agreed order"

I told you(behind my door, being inside my apartment) that I am not waiving my above Motion to vacate "agreed order", by opening the door and giving you access.

You insisted demanding for me to open the door and to give you access. Then I told you to wait for a few minutes in order for me to get dressed. Then I opened the door, I saw you in the stairs, I said: "I opened the door because you are or were demanding it" and I also told you that I was sick because of your alarming behavior.

Then you came to the door, you stopped after you entered in part. I said nothing, I did nothing. I was not physically preventing you. Then you said: "This is not access, I will go to court to evict you". I said:"I did what you were asking me to do."You repeated: "This is not access", you turned your back to me and you left without greeting me, stating: " I will take you to court to evict you because you did not give me access". I said:

"Without waiving my Motion to vacate
"agreed order", I gave you access;
to my surprise you are turning your
back to me and you are leaving ".
END OF MEMORANDUM.
(Signature:) D.C.Georgiou

IN THE CIRCUIT COURT OF COOK COUNTY,ILL.

Gauthier

v. NO. 89 M2 1681

Georgiou

ORDER

This matter coming on to be heard on motion of plaintiff to hear defendant's motion to vacate an agreed order; and plaintiff's motion for immediate possession, plaintiff appearing and with his attorney; Defendant appearing personally; and the court being advised in the premises, it is ordered:

1. Defendant's motion to vacate agreed order is denied. 2. Plaintiff's motion for immediate possession is granted.

3. Plaintiff shall have possession this date, Nov 8,1989.

(Seal:) ENTERED 11/8/1989

Atty No.50373 Name Charles Goerth, Atty for plaintiff,1200 Central Av.,Wilmette IL tel:256-7102. Record on AppealNo:C000026

A P P E N D I X

ORDER

IN THE APPELLATE COURT, STATE OF ILLINOIS

FIRST DISTRICT

GEORGE A. GAUTHIER,

Plaintiff-Appellee,

v. NO. 1-89-3013

DR. D. GEORGIOU,

Defendant-Appellant.

ORDER

Upon consideration of petition for rehearing filed by Defendant-Appellant on June 20, 1990,

IT IS HEREBY ORDERED that said petition for rehearing is DENIED.

(Seal:) ORDER ENTERED JUL 12 90

/s/ David Cerda Justice

/s/ William S. White Justice

/s/ Charles E Freeman Justice

GILBERT S. MARCHMAN, CLERK OF THE APPELLATE COURT, FIRST DISTRICT

70670 ILLINOIS SUPREME COURT

JULEANN HORNYAK, CLERK

SUPREME COURT BUILDING

SPRINGFIELD, ILL 62706

(217) 782-2035

October 3, 1990

Dr. D. Georgiou

2642 Prairie Ave.

Evanston, IL 60201

No. 70670 - George A. Gauthier, respondent, v. Dr. D. Georgiou, petitioner. Leave to appeal, Appellate Court, First District.

The Supreme Court today DENIED the petition for leave to appeal in the above entitled cause.

The mandate of this Court will issue to the Appellate Court on October 25, 1990.

SEAL OF THE SUPREME COURT

STATE OF ILLINOIS, SUPREME COURT CLERK

SUPREME COURT BUILDING,SPRINGFIELD 62706

JULEANN HORNYAK CLERK OF THE COURT

(217) 782-2035

FIRST DISTRICT OFFICE , ROOM 30-129

RICHARD J. DALEY CENTER, CHICAGO 60602

(312) 793-1332

October 16,1990

Dr. D.C.Georgiou,

2642 Prairie Avenue, Evanston, IL 60201

THE COURT HAS TODAY ENTERED THE FOLLOWING ORDER IN THE CASE OF:

No. 70670 - George A. Gauthier, respondent, v. Dr. D. Georgiou, petitioner.

The motion by petitioner to stay the mandate pending the filing and disposition of writ of certiorari in the United States Supreme Court is allowed.

A copy of the order is enclosed. /Goerth

JH:kp Encl. cc:George A.Gauthier,Charles

(Seal:) DEPARTMENT OF DEFENSE, U.S.A.

DEPARTMENT OF DEFENSE

ARMED FORCES EXAMINING AND ENTRANCE

STATION, 65 EAST 9TH STREET

CHICAGO, ILLINOIS 60605

MEPCC-CHI 12 April 1979

SUBJECT: Letter of Appreciation

Dimitrios C. Georgiou, MD

Chief Medical Officer

Consultant in Psychiatry and Neurology

AFEES - Chicago

65 E. 9th Street, Chicago, IL 60605

Dear Dr. Georgiou:

It is with great pleasure that I wish to express my appreciation with regard to the extremely competent service you have offered to the Department of Defense as Chief Medical Officer and Consultant in Psychiatry and Neurology at AFEES-Chicago, since January 31, 1977 when you were appointed. (continued)

(DEPARTMENT OF DEFENSE Letter of Appreciation of 12 April 1979, continued). Your proper handling of the complex medical, psychiatric and administrative issues, arising frequently, has demonstrated an extensive theoretical background as well as abilities and skills which are more than ordinary.

The MEPCOM Surgeon, Dr. Joseph W. McNaney, MD Colonel, MC was also glad to share with me his positive comments on several occasions.

A copy of this correspondence will be placed in your official personnel file.

(Signature) GEORGE CRONIN
LTC, FA
Commanding

(Seal:) DEPARTMENT OF DEFENSE, U.S.A.

DEPARTMENT OF THE ARMY

OFFICE OF THE ASSISTANT SECRETARY

WASHINGTON DC 20310 1813 (Seal)

24 AUG 1988

SFMR-RBE

Ms. Dolores L. Rozzi, Director

Office of Review and Appeals

Equal Employment Opportunity Commission

5203 Leesburg Pike, Suite 900

Falls Church, Virginia 22041

RE: Complaint of Dimitrios C. Georgiou and John O. Marsh, Jr., Secretary of the Army. Docket No: 01.88.3042 Agency No: 81-06-519

Dear Ms. Rozzi:

Thank you for your letter of July 12, 1988, that requested the case file on Mr. Dimitrios C. Georgiou. The final Army decision issued to Mr. Georgiou was not in compliance with governing EEO policies

DEPT. OF THE ARMY, OFFICE OF THE ASSISTANT SECRETARY, Letter 24 AUG 88,Cont'd

and procedures. The complaint is being remanded for procedural compliance and the final decision shall be rescinded. Therefore, the complaint is inappropriate for review and appeal.

Sincerely,

(Signature)

Stanley L. Kelley, Jr.

Deputy Director,

Equal Employment Opportunity

Compliance and Complaints Review

Agency.

(Seal:) EQUAL EMPLOYMENT OPPORTUNITY COMN.

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Office of Review and Appeals

5203 Leesburg Pike, Suite 900

Falls Church, Virginia 22041

OCT 6 1988

Dr. Dimitrios C. Georgiou

2642 Prairie Avenue, Evansyon, Illinois

ORA Docket No. 01.88.3042

Dear Dr. Georgiou:

Our records indicate that we have already forwarded a copy of the enclosed letter from the Department of the Army to you. However, in response to your request a second copy herewith is forwarded.

Sincerely,

(Signature) C. Lloyd Buddoo

Supervisory General Attorney

Research and Analysis Unit

Enclosure

CERTIFIED P-468-158-955 RETURN REC.REQD.

M E M O R A N D U M

To: Ms. Dolores L. Rozzi, Director, Office of Review and Appeals, EEO COMMISN. 5203 Leesburg Pike, Suite 900, Falls Church, Virginia 22041

From: Dimitrios C. Georgiou, M.D.,2642 Prairie Ave., Evanston, IL 60201

Date: December 28, 1990

This is to remind you, once more, that the enclosed two documents (one from EEOC, dated Oct.6, 1988, and signed C. Lloyd Buddoo and the other, attached together, from the Department of the Army, Office of the Assistant Secretary, dated 24 August 1988, signed Stanley Kelley, Jr., Deputy Director, EEO Compliance and Complaints Review Agency) are the ones I have received <u>last</u> from your Agency. Meanwhile,as I have informed your office DG periodically,discrimination /continues.(Signed)

IN THE U.S. SUPREME COURT No._____

GEORGE A. GAUTHIER, Plaintiff-Respondent

v. DR. D. GEORGIOU, Defendant-Petitioner

NOTICE OF FILING AND PROOF OF SERVICE

To: Mr. Charles R. Goerth, Attorney At Law, 1200 Central Av., Wilmette, IL 60091

You are hereby notified that pursuant to the provisions of the Rules of Court, we have on this date filed with the Clerk of the Court the Petition for Writ of Certio--ari, and Appendix, including, but not limited to, extension of the period within which the mandate is stayed, until disposition of the Petition by the U.S. Supreme Court, with the proper number of copies. Date: March 1,1991. /s/D.C.Georgiou

I, Dr. D. GEORGIOU, Defendant-Petitioner, on oath state that on March 1,91, I served the proper number of copies of the above document on the party mentioned above, by mailing to his office address

(NOTICE OF FILING AND PROOF OF SERVICE, continuation page)

mentioned above the above mentioned copies, by enclosing them in a postmarked, prepaid, sealed envelope, postage prepaid and depositing same at the post-office on Dearborn St. and Adams in Chicago. (Signature): D C Georgiou

Subscribed and sworn to before me this 1st day of March 1991

(Signature)

(Seal:) OFFICIAL SEAL FREEDA I. KOSIEK
Notary Public, State of Illinois
My Commission Expires 8-31-92